

2021
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2021

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE**

**PUBLISHED BY AUTHORITY OF
THE LEGISLATURE**

SUPPLEMENTING

Volume 9

Titles 29 to 33

(As Revised 2020)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher



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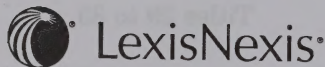
by

THE STATE OF MISSISSIPPI

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

Annotations

Our annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the manner in which we read in create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read about decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the annotations below sometimes may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 4th Series
- Federal Supplement, 3rd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been included for annotations.

Amendments Notice

Amendments have noted how the new legislation affects existing sections.

Editor's Notes

Editor's notes emphasize subject matter and legislative history of repealed sections, as well as amendments to portions of legislative acts that have not been updated, or provide other pertinent information.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

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Amendment notes detail how the new legislation affects existing sections.

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Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 3. State Board of Public Contractors

SEC.

31-3-16.

Commercial contractors required to possess permit issued under Section 27-65-27 in order to obtain building permit; applicability of section.

CHAPTER 19. Public Debts.

31-19-30.

Receipt and consideration of offers to compromise and settle doubtful claims.

MISSISSIPPI CODE
1972
ANNOTATED
VOLUME NINE

TITLE 29.

PUBLIC LANDS, BUILDINGS AND PROPERTY

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| Chapter 5. | Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion. | 29-5-1 |
| Chapter 9. | Inventories of State Property. | 29-9-1 |

CHAPTER 5.

CARE OF CAPITOL, OLD CAPITOL, STATE OFFICE BUILDINGS AND EXECUTIVE MANSION

| | |
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IN GENERAL

| | |
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| 29-5-69. | Parking for capitol employees during legislative sessions. |
| 29-5-77. | Repealed. |

§ 29-5-57. Regulation of parking.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-59. Parking for Governor.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-61. Parking adjacent to north side of New Capitol Building.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-63. Parking for state officers, employees, and press.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-65. Parking for members of Legislature.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-67. Insignia for automobiles.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-69. Parking for capitol employees during legislative sessions.

During the period each year when the Legislature is in session, all parking spaces adjacent to the Capitol grounds on the west side of President Street and on both sides of High Street shall be reserved for the use of Capitol employees. The Office of General Services is instructed to place signs to that effect on said streets during legislative sessions.

All employees in the Capitol who own automobiles shall be provided with distinctive stickers. Each such employee shall place the sticker in a prominent place on the rear of the automobile owned and regularly used by such employee.

Any person without a sticker on his automobile who parks in any space reserved in the first paragraph of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed Twenty-five Dollars (\$25.00).

Any person who is not a Capitol employee who has on his automobile a Capitol parking sticker or any Capitol employee who gives his parking sticker to a non-Capitol employee to use on such person's car, shall be guilty of a misdemeanor and shall, upon conviction, be fined One Hundred Dollars (\$100.00).

The Office of Capitol Police within the Department of Public Safety shall have the authority and are directed to enforce the provisions of this section.

HISTORY: Codes, 1942, § 8953.45; Laws, 1972, ch. 434, §§ 1, 2, 3, 4; Laws, 1984, ch. 488, § 17, eff from and after July 1, 1984; Laws, 2021, ch. 403, § 21, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment rewrote the last paragraph, which read: "The capitol police employed by the office of general services shall have the authority and are directed to enforce the provisions of this section."

§ 29-5-73. Parking restrictions.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-75. Penalty for illegal parking.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-77. Repealed.

Repealed by Laws, 2021, ch. 403, § 23, eff from and after July 1, 2021.

§ 29-5-77. [Codes, 1942, §§ 8952-28, 8952-29; Laws, 1972, ch. 326, §§ 29, 30; Laws, 1984, ch. 488, § 19; Laws, 1996, ch. 398, § 1; Laws, 2004, ch. 367, § 1; Laws, 2005, ch. 504, § 4; Laws, 2006, ch. 364, § 1; Laws, 2008, ch. 430, § 2; Laws, 2008, ch. 466, § 1; Laws, 2013, ch. 357, § 3; Laws, 2017, ch. 444, § 10, eff from and after July 1, 2017.]

Editor's Notes — Former § 29-5-77 gave the Department of Finance and Administration jurisdiction to enforce laws on state grounds. For present similar provisions, see § 45-1-19.

§ 29-5-81. Description of state grounds.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-83. Restrictions on travel and occupancy of grounds.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-85. Prohibition of sales, signs, placards, and solicitations.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-87. Injuries to structures or vegetation.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-89. Discharge of firearms or explosives, setting fires, uttering threatening or abusive language.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-91. Parades and assemblages, display of banners.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-93. Penalties.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

§ 29-5-95. Suspension of prohibitions on proper occasions.

Cross References — Department of Public Safety to enforce provisions of this section, see § 45-1-19.

CHAPTER 9.

INVENTORIES OF STATE PROPERTY

Sec.

29-9-9. Disposal of obsolete or unnecessary property.

§ 29-9-9. Disposal of obsolete or unnecessary property.

(1) Whenever any vehicle, equipment, office furniture, office fixture or any other personal property which has been acquired or is owned by any institution, department or agency of the State of Mississippi becomes obsolete or is no longer needed or required for the use of such institution, department or agency, the same may be: (a) sold for cash, transferred, traded or exchanged for other property, furniture, equipment, fixture or vehicle needed by said institution, department or agency after having first obtained the written approval of the Governor's Office of General Services and the State Auditor or approval by the Legislative Budget Office if utilized under the jurisdiction of the Legislature; or (b) donated to any institution, department or agency of the State of Mississippi, or any political subdivision or local governing authority of the state. The singular shall include the plural. Transfers, trades, exchanges or donations made pursuant to this subsection may be made to any political subdivision or local governing authority of the State of Mississippi.

(2) The proceeds of all cash sales made, as authorized in this section, shall be paid over into the support and maintenance or contingent fund of the institution, department or agency as it deems best.

(3) The head of each state institution, department or agency shall be responsible and liable personally and on his official bond, in the amount of the value shown on the state inventory, for the disposal of any property contrary to the provisions of this section.

(4) The Office of General Services, on the approval of the Public Procurement Review Board, is hereby authorized and empowered to make reasonable rules and regulations and to require such information as may be necessary to carry out the purpose and provisions of this section.

(5) Any violation of the provisions hereof by any elected head of any institution, department, commission or agency of the State of Mississippi, or any appointee or employee of any institution, department, agency or commission coming under the provisions of this section, shall constitute a misdemeanor and, upon conviction therefor, shall be punished by a fine of not exceeding One Thousand Dollars (\$1,000.00) in addition to personal and official liability, as hereinabove provided.

(6) The disposal of any unneeded personal property at the project described in Section 57-75-5(f)(vi), may be made in accordance with the provi-

sions of the Mississippi Major Economic Impact Act by the Mississippi Major Economic Impact Authority, under such rules and regulations as may be adopted by such authority.

(7) The disposal of any alternative housing units purchased through the Mississippi Alternative Housing Pilot Program may be made by the Mississippi Emergency Management Agency as required by federal law to be in compliance with regulations of the federal articles of agreement and its awarded conditions, and upon approval of the Public Procurement Review Board.

(8) This section shall not be applicable to the State Veterans Homes in the event the State Veterans Affairs Board has contracted for property management services at the State Veterans Homes.

HISTORY: Codes, 1942, § 4065.5; Laws, 1948, ch. 361, §§ 1-6; Laws, 1955, Ex Sess ch. 25, §§ 1, 2; Laws, 1984, ch. 488, § 188; Laws, 1996, ch. 554, § 6; Laws, 1997, ch. 593, § 2; Laws, 2003, ch. 441, § 3; Laws, 2008, ch. 378, § 1, eff from and after passage (approved Mar. 31, 2008); Laws, 2021, ch. 459, § 2, eff from and after passage (approved April 16, 2021).

Amendment Notes — The 2021 amendment, effective April 16, 2021, added (8).

TITLE 31.

PUBLIC BUSINESS, BONDS AND OBLIGATIONS

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| Chapter 3. | State Board of Public Contractors. | 31-3-1 |
| Chapter 7. | Public Purchases. | 31-7-3 |
| Chapter 9. | Surplus Property Procurement Commission. | 31-9-1 |
| Chapter 11. | State Construction Projects. | 31-11-1 |
| Chapter 19. | Public Debts. | 31-19-1 |

CHAPTER 3.

STATE BOARD OF PUBLIC CONTRACTORS

| | |
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| Sec. | |
| 31-3-16. | Commercial contractors required to possess permit issued under Section 27-65-27 in order to obtain building permit; applicability of section. |

§ 31-3-16. Commercial contractors required to possess permit issued under Section 27-65-27 in order to obtain building permit; applicability of section.

All commercial contractors, in order to obtain a building permit in the State of Mississippi, shall possess a permit from the Department of Revenue issued under Section 27-65-27.

Notwithstanding the definition of “contractor” in Section 31-3-1, for purposes of this section, a commercial contractor is a person or entity contracting or offering to contract with an owner or possessor of commercial real estate to construct a building thereon, or to repair or renovate any portion of a building thereon, regardless of the cost of the project, and regardless of whether all or part of the cost is expected to be paid as a benefit of a property and casualty insurance policy.

This section shall not apply to a commercial contractor having a permanent place of business in the State of Mississippi or licensed under this chapter.

HISTORY: Laws, 2021, ch. 476, § 2, eff from and after passage (approved April 22, 2021).

Editor’s Notes — Laws of 2021, ch. 476, § 4, effective April 22, 2021, provides: “SECTION 4. (1) Section 1 of this act shall be codified in Title 73, Chapter 59, Mississippi Code of 1972.

“(2) Section 2 of this act shall be codified in Title 31, Chapter 3, Mississippi Code of 1972.”

Cross References — Residential contractors required to possess permit issued under Section 27-65-27 to obtain building permit, see § 73-59-18.

CHAPTER 7.

PUBLIC PURCHASES

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| In General. | 31-7-3 |
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| Implementation of Central Purchasing by Counties. | 31-7-101 |
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Sec.

- 31-7-13. Bid requirements and exceptions; public auctions.
- 31-7-13.1. Design-build method of construction contracting; adoption of fixed firm price or guaranteed maximum price contract; evaluation of proposals that include criteria other than cost; compliance with minimum building code standards.
- 31-7-13.2. Construction manager at risk method of project delivery; qualifications-based selection procedure for procuring construction management at risk, architectural, engineering and land surveying services.
- 31-7-14. Public contracts of energy efficiency services [Repealed effective July 1, 2025].

§ 31-7-13. Design-build method of contracting and certain other contracts.

All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over \$5,000.00.** Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

(b) **Bidding procedure for purchases over \$5,000.00 but not over \$50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars (\$50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or his designee, as the case may be, and not the

governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or his designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) Bidding procedure for purchases over \$50,000.00.

(i) Publication requirement.

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

2. Reverse auctions shall be the primary method for receiving bids during the bidding process. If a purchasing entity determines that a reverse auction is not in the best interest of the state, then that determination must be approved by the Public Procurement Review Board. The purchasing entity shall submit a detailed explanation of why a reverse auction would not be in the best interest of the state and present an alternative process to be approved by the Public Procurement Review Board. If the Public Procurement Review Board authorizes the purchasing entity to solicit bids with a method other than reverse auction, then the purchasing entity may designate the other methods by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids received electronically in a secure system, or bids received by any other method that promotes open competition and has been approved by the Office of Purchasing and Travel. However, reverse

auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges and term contracts as provided in paragraph (n) of this section. The Public Procurement Review Board must approve any contract entered into by alternative process. The provisions of this item 2 shall not apply to the individual state institutions of higher learning.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and

Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working day of the contract execution, the agency or governing authority shall post to the designated web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. However, if valid justification is presented, the Department of Finance and Admin-

istration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions necessary to accept electronic bids from those bidders who choose to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

(d) **Lowest and best bid decision procedure.**

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and

shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) **Decision procedure for Mississippi Landmarks.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of Sections 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure: Purchases may be made from the lowest and best prequalified bidder. Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on

its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) **Construction project negotiations authority.** If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten

Thousand Dollars (\$10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) **Petroleum purchase alternative.** In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained, the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) **Road construction petroleum products price adjustment clause authorization.** Any agency or governing authority authorized

to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the Mississippi Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.

If the governing board or the executive head, or his designees, of any agency determines that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made.

Total purchases made under this paragraph (j) shall only be for the purpose of meeting needs created by the emergency situation. Following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be filed with the Department of Finance and Administra-

tion. Any contract awarded pursuant to this paragraph (j) shall not exceed a term of one (1) year.

Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (j).

(k) **Governing authority emergency purchase procedure.** If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority. Purchases under the grant program established under Section 37-68-7 in response to COVID-19 and the directive that school districts create a distance learning plan and fulfill technology needs expeditiously shall be deemed an emergency purchase for purposes of this paragraph (k).

(l) **Hospital purchase, lease-purchase and lease authorization.**

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

(i) **Purchasing agreements approved by department.** Pur-

chasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) **Outside equipment repairs.** Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) **In-house equipment repairs.** Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) **Raw gravel or dirt.** Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) **Governmental equipment auctions.** Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority under the exemption authorized by this subparagraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) **Intergovernmental sales and transfers.** Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs,

homemaking programs and for the feeding of county or municipal prisoners.

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) **Waste disposal facility construction contracts.** Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities, a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.** Energy efficiency services and equipment acquired by school districts, community

and junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) **Municipal electrical utility system fuel.** Purchases of coal and/or natural gas by municipally owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) **Library books and other reference materials.** Purchases by libraries or for libraries of books and periodicals; processed film, videocassette tapes, filmstrips and slides; recorded audiotapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) **Unmarked vehicles.** Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) **Election ballots.** Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) **Multichannel interactive video systems.** From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) **Purchases of prison industry products by the Department of Corrections, regional correctional facilities or privately owned prisons.** Purchases made by the Mississippi Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) **Undercover operations equipment.** Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) **Junior college books for rent.** Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) **Certain school district purchases.** Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) **Purchases of Mississippi Industries for the Blind products.** Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) **Purchases of state-adopted textbooks.** Purchases of state-adopted textbooks by public school districts.

(xxvi) **Certain purchases under the Mississippi Major Economic Impact Act.** Contracts entered into pursuant to the provisions of Section 57-75-9(2), (3) and (4).

(xxvii) **Used heavy or specialized machinery or equipment for installation of soil and water conservation practices purchased at auction.** Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (1)(ii).

(xxix) **Purchases made pursuant to qualified cooperative purchasing agreements.** Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of Purchasing and Travel and established by or for any municipality, county, parish or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchasing and Travel.

(xxxix) **Design-build method of contracting and certain other contracts.** Contracts entered into under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

(xxxix) **Toll roads and bridge construction projects.** Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

(xxxix) **Certain purchases under Section 57-1-221.** Contracts entered into pursuant to the provisions of Section 57-1-221.

(xxxix) **Certain transfers made pursuant to the provisions of Section 57-105-1(7).** Transfers of public property or facilities under Section 57-105-1(7) and construction related to such public property or facilities.

(xxxix) **Certain purchases or transfers entered into with local electrical power associations.** Contracts or agreements entered into under the provisions of Section 55-3-33.

(xxxix) Certain purchases by an academic medical center or health sciences school. Purchases by an academic medical center or health sciences school, as defined in Section 37-115-50, of commodities that are used for clinical purposes and 1. intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease, and 2. medical devices, biological, drugs and radiation-emitting devices as defined by the United States Food and Drug Administration.

(xxxix) **Certain purchases made under the Alyce G. Clarke Mississippi Lottery Law.** Contracts made by the Mississippi Lottery Corporation pursuant to the Alyce G. Clarke Mississippi Lottery Law.

(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) **Purchase law violation prohibition and vendor penalty.** No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor

shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) **Fuel management system bidding procedure.** Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors

determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) **Minority set-aside authorization.** Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

(i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(ii) "Black" means persons having origins in any black racial group of Africa.

(iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.

(iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to

the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) **Procurement of construction services by state institutions of higher learning.** Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the offeror whose proposal is determined to represent the best value to the citizens of the State of Mississippi, where requests for proposals are solicited.

(v) **Insurability of bidders for public construction or other public contracts.** In any solicitation for bids to perform public construction or other public contracts to which this section applies, including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.

HISTORY: Codes, 1942, § 9024-08; Laws, 1962, ch. 497, § 8; Laws, 1980, ch. 440, § 6; Laws, 1981, ch. 306, § 2; Laws, 1982, ch. 449, § 1; Laws, 1983, ch. 330, § 3, ch. 341; Laws, 1984, ch. 363; Laws, 1984, ch. 480, § 3; Laws, 1984, ch. 488, § 158; Laws, 1985, ch. 493, § 6; Laws, 1986, ch. 398; Laws, 1986, ch. 489, § 14; Laws, 1988, ch. 351; Laws, 1988, ch. 589, § 23; Laws, 1988 Ex Sess, ch. 14, § 65; Laws, 1989, ch. 349, § 1; Laws, 1989, ch. 394, § 3; Laws, 1990, ch. 534, § 27; Laws, 1990, ch. 545, § 2; Laws, 1990, ch. 561, § 2; Laws, 1990, 1st Ex Sess, ch. 51, § 2; Laws, 1991, ch. 337, § 1; Laws, 1991, ch. 523, § 1; Laws, 1992, ch. 571 § 3; Laws, 1993, ch. 418, § 2; Laws, 1993, ch. 617, § 12; Laws, 1993, ch. 556, § 3; Laws, 1994, ch. 471, § 2; Laws, 1994 Ex Sess, ch. 26, § 22; Laws, 1996, ch. 495, § 1; Laws, 1997, ch. 593, § 1; Laws, 1998, ch. 574, § 6; Laws, 1999, ch. 407, § 1; Laws, 1999, ch. 459, § 1; Laws, 2000, ch. 428, § 3; Laws, 2000, ch. 593, § 9; Laws, 2000, 3rd Ex Sess, ch. 1, § 13; Laws, 2001, ch. 333, § 2; Laws, 2002, ch. 563, § 1; Laws, 2003, ch. 539, § 5; Laws, 2004, ch. 394, § 1; Laws, 2004, ch. 577, § 2; Laws, 2004, 3rd Ex Sess, ch. 1, § 190; Laws, 2005, ch. 504, § 5; Laws, 2006, ch. 446, § 1; Laws, 2007, ch. 423, § 1; Laws, 2007, ch. 424, § 2; Laws, 2007, ch. 494, § 7; Laws, 2007, ch. 582, § 22; Laws, 2008, ch. 417, § 1; Laws, 2008, ch. 469, § 1; brought forward without change, Laws, 2008, ch. 544, § 4; Laws, 2009, ch. 538, § 1; Laws, 2010, ch. 301, § 7; Laws, 2010, ch. 533, § 26; Laws, 2011, ch. 485, § 2; Laws, 2012, ch. 446, § 2; Laws, 2013, ch. 390, § 1; Laws, 2013, ch. 466, § 3; Laws, 2013, ch. 519, § 1; Laws, 2015, ch. 488, § 1; Laws, 2017, ch. 398, § 5; Laws, 2017, ch. 400, § 16; Laws, 2017, ch. 411, § 1, eff from and after Jan. 1, 2018; Laws, 2018, 1st Ex Sess, ch. 2, § 51, eff from and after September 1, 2018; Laws, 2020, ch. 488, § 10, eff from and after passage, (became law without the Governor's signature on July 9, 2020); Laws, 2021, ch. 451, § 4, eff from and after July 1, 2021; Laws, 2021, ch. 471, § 2, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the heading of paragraph (m)(xxxi) by substituting “Design-build method of contracting and certain other contracts” for “Design build method and design-build method of contracting.” The Joint Committee ratified the corrections at its August 20, 2021, meeting.

Section 4 of Chapter 451, Laws of 2021, effective from and after July 1, 2021 (approved April 16, 2021), amended this section. Section 2 of Chapter 471, Laws of 2021, effective from and after July 1, 2021 (approved April 19, 2021), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 20, 2021, meeting of the Committee.

Editor’s Notes — Laws of 2020, ch. 488, § 11, effective July 9, 2020, provides:

“SECTION 11. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect.”

Amendment Notes — The 2020 amendment, effective July 9, 2020, in (j), added the last paragraph; and in (k), added the last sentence.

The first 2021 amendment (ch. 451), in (m)(xxxi), deleted “dual-phase” following “Design-build method and.”

The second 2021 amendment (ch. 471), in (b), substituted “his designee” for “their designee” twice; and in (c)(i)2, added “and term contracts as provided in paragraph (n) of this section” at the end of the fifth sentence.

§ 31-7-13.1. Design-build method of construction contracting; adoption of fixed firm price or guaranteed maximum price contract; evaluation of proposals that include criteria other than cost; compliance with minimum building code standards.

(1) The method of contracting for construction described in this section shall be known as the “design-build method” of construction contracting. This method of construction contracting may be used on residential buildings, residential mixed-use developments, parking garages and other prescriptive type facilities. The design-build method of construction contracting may only be used when the Department of Finance and Administration or a governing authority has determined that it satisfies the public interest better than traditional design-bid or when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project. At a minimum, the determination must include a detailed explanation of why using the design-build method for a particular project satisfies the public need better than the traditional design-bid-build method based on the following criteria:

(a) The project provides a savings in time or cost over traditional methods; and

(b) The size and type of the project is suitable for design-build.

(2) For each proposed design-build project, either a fixed firm price or guaranteed maximum price contract must be adopted. Before solicitation of proposals, the agency or governing authority shall develop a scope of work statement that provides prospective offerors with sufficient information regarding the requirements of the agency or governing authority. The scope of work statement must include, but is not limited to, the following information:

(a) Location and nature of proposed site(s) that include preliminary geotechnical information from borings as well as survey drawings that show topography, adjacent buildings and utilities;

(b) Any mandatory requirements such as minimum number and types of spaces, any minimum or maximum building area(s) or height(s), applicable energy codes and/or efficiency targets, applicable zoning regulations and any aesthetic or character defining standards;

(c) Any mandatory material and/or system performance requirements and/or specifications; and

(d) General budget parameters, schedule or delivery requirements, relevant criteria for evaluation of proposals, and any other information necessary to enable the design-builders to submit proposals that meet the needs of the agency or governing authority.

(3) The agency or governing authority shall cause to be published once a week, for at least two (2) consecutive weeks in a regular newspaper published in the county in which the project is to be located, or a newspaper with statewide circulation, a notice inviting proposals for the design-build construction project. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall post the notice on the Mississippi Procurement Portal or mail written notice to, or provide electronic notification to, the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. The proposals shall not be opened in less than fifteen (15) working days after the last notice is published. The notice must inform potential offerors of how to obtain the scope of work statement developed for the project, and the notice must contain such other information to describe adequately the general nature and scope of the project so as to promote full, equal and open competition.

(4) The agency or governing authority shall accept initial proposals only from entities able to provide an experienced and qualified design-build team that includes, at a minimum, an architectural or engineering firm licensed and registered in Mississippi and a contractor properly licensed and domiciled in Mississippi for the type of work required.

(5) Proposals that include criteria other than cost only shall be evaluated by an evaluation committee established by the procuring entity. The evaluation committee shall be composed of not less than three (3) people, at least one (1) of which shall be an architect or engineer licensed and registered in Mississippi. Selection criteria of the evaluation committee shall be limited to the following:

- (a) The bidder's knowledge and experience in executing projects of similar size and complexity;
- (b) The experience and qualifications of the proposed office and construction management personnel;
- (c) The experience and qualifications of the subcontractors proposed;
- (d) The experience and qualifications of the architect or engineer and consultants;
- (e) Schedule control; and
- (f) Cost factors.

Cost as an evaluation factor shall be given the highest criteria weighting and at least thirty-five percent (35%) out of the one hundred percent (100%) total weight of all the other evaluation factors.

(6) If the agency or governing authority accepts a proposal other than the proposal with the lowest costs that was actually submitted, the agency or governing authority shall enter on its minutes detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value, and the agency or governing authority shall state specifically on its minutes the justification for its award.

(7) All facilities that are governed by this section shall be designed and constructed to comply with standards equal to or exceeding the minimum building code standards employed by the state as required under Section 31-11-33 in force at the time of contracting. All private contractors or private entities contracting or performing under this section must comply at all times with all applicable laws, codes and other legal requirements pertaining to the project.

(8) An agency or governing authority may not award a stipulated fee to an offeror for preparation costs to submit a response to the request for proposals.

(9) This section shall not authorize the awarding of construction contracts according to any contracting method that does not require the contractor to satisfactorily perform, at a minimum, both any balance of design, using an independent professional licensed in Mississippi, and construction of the project for which the contract is awarded.

(10) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

(11) The provisions of this section shall not apply to procurement authorized in Section 59-5-37(3).

HISTORY: Laws, 2007, ch. 494, § 1; Laws, 2008, ch. 544, § 2, eff from and after passage (approved May 9, 2008); Laws, 2021, ch. 451, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment deleted “dual-phase” preceding “design-build” in the first and last sentences of the introductory paragraph of (1) and in the first sentence of (2); in (1), rewrote the former second sentence, which read: “This method of construction contracting may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project” and divided it into the present second and third sentences; in (2), in the first sentence, substituted “fixed firm price or guaranteed maximum price contract” for

“two-phase procedure for awarding a contract,” in the second sentence, deleted “During Phase One, and” from the beginning, “initial” preceding “proposals” and “with the assistance of an architectural or engineering firm” following “shall develop,” rewrote (a) through (c), which read: “(a) Drawings must show overall building dimensions and major lines of dimensions, and site plans that show topography, adjacent buildings and utilities; (b) Drawings must include information to adequately explain HVAC, electrical and structural requirements; (c) The scope of work statement also must include building elevations, sections and design details,” and deleted “The scope of work statement must include” from the beginning of (d); in (3), added the second sentence; in (4), inserted “licensed and” in the first sentence, and deleted the former last sentence, which read: “From evaluation of initial proposals under Phase One, the agency or governing authority shall select a minimum of two (2) and a maximum of five (5) design-builders as ‘short-listed firms’ to submit proposals for Phase Two”; rewrote (5), which previously related to Phase-Two proposals; in (6), substituted “the proposal with the lowest costs that was actually” for “the lowest dollar proposal actually”; and rewrote (8), which previously related to the award of a stipulated fee to unsuccessful short-listed offerors, and the calculation of that fee.

§ 31-7-13.2. Construction manager at risk method of project delivery; qualifications-based selection procedure for procuring construction management at risk, architectural, engineering and land surveying services.

(1) When used in this section, “construction manager at risk” means a method of project delivery in which a construction manager guarantees a maximum price for the construction of a project and in which the governing authority or board, before using this method of project delivery, shall include a detailed explanation of why using the construction manager at risk method of project delivery for a particular project satisfies the public need better than that traditional design-bid-build method based on the following criteria:

- (a) The use of construction manager at risk for the project provides a savings in time or cost over traditional methods; and
 - (b) The size and type of the project is suitable for use of the construction management at risk method of project delivery.
- (2) When the construction manager at risk method of project delivery is used:
- (a) There may be a separate contract for design services and a separate contract for construction services;
 - (b) The contract for construction services may be entered into at the same time as a contract for the design services or later;
 - (c) Design and construction of the project may be in sequential or concurrent phases; and
 - (d) Finance, maintenance, operation, reconstruction or other related services may be included for a guaranteed maximum price.

(3) When procuring design professional services under a construction manager at risk project delivery method, the agency or governing authority shall procure the services of a design professional pursuant to qualifications-based selection procedures.

(4) Before the substantial completion of the design documents, the agency or governing authority may elect to hire a construction manager.

(5) When procuring construction management services, the agency or governing authority shall follow the qualifications-based selection procedures as outlined in subsection (10) of this section or the competitive sealed proposal procedures as outlined in Section 31-17-13.

(6) The agency or governing authority may require the architect or engineer and the construction manager, by contract, to cooperate in the design, planning and scheduling, and construction process. The contract shall not make the primary designer or construction manager a subcontractor or joint-venture partner to the other or limit the primary designer's or construction manager's independent obligations to the agency or governing authority.

(7) Notwithstanding anything to the contrary in this chapter:

(a) Each project for construction under a construction manager at risk contract shall be a specific, single project with a minimum construction cost of Twenty-five Million Dollars (\$25,000,000.00).

(b) Each project under a construction manager at risk contract shall be a specific, single project. For the purposes of this paragraph, "specific, single project" means a project that is constructed at a single location, at a common location or for a common purpose.

(8) Agencies shall retain an independent architectural or engineering firm to provide guidance and administration of the professional engineering or professional architecture aspects of the project throughout the development of the scope, design, and construction of the project.

(9) The state shall, on an annual basis, compile and make public all proceedings, records, contracts and other public records relating to procurement transactions authorized under this section.

(10) For purposes of this section, the "qualifications-based selection procedure" shall include:

(a) Publicly announcing all requirements for construction management at risk, architectural, engineering, and land surveying services, to procure these services on the basis of demonstrated competence and qualifications, and to negotiate contracts at fair and reasonable prices after the most qualified firm has been selected.

(b) Agencies or governing authorities shall establish procedures to prequalify firms seeking to provide construction management at risk, architectural, engineering, and land surveying services or may use prequalification lists from other state agencies or governing authorities to meet the requirements of this section.

(c) Whenever a project requiring construction management at risk, architectural, engineering, or land surveying services is proposed for an agency or governing authority, the agency or governing authority shall provide advance notice published in a professional services bulletin or advertised within the official state newspaper setting forth the projects and services to be procured for not less than fourteen (14) days. The professional services bulletin shall be mailed to each firm that has requested the

information or is prequalified under Section 31-7-13. The professional services bulletin shall include a description of each project and shall state the time and place for interested firms to submit a letter of interest and, if required by the public notice, a statement of qualifications.

(d) The agency or governing authority shall evaluate the firms submitting letters of interest and other prequalified firms, taking into account qualifications. The agency or governing authority may consider, but shall not be limited to, considering:

- (i) Ability of professional personnel;
- (ii) Past record and experience;
- (iii) Performance data on file;
- (iv) Willingness to meet time requirements;
- (v) Location;
- (vi) Workload of the firm; and
- (vii) Any other qualifications-based factors as the agency or governing authority may determine in writing are applicable.

The agency or governing authority may conduct discussions with and require public presentations by firms deemed to be the most qualified regarding their qualifications, approach to the project and ability to furnish the required services.

(e) The agency or governing authority shall establish a committee to select firms to provide construction management at risk, architectural, engineering, and land surveying services. A selection committee may include at least one (1) public member nominated by a statewide association of the profession affected. The public member may not be employed or associated with any firm holding a contract with the agency or governing authority nor may the public member's firm be considered for a contract with that agency or governing authority while serving as a public member of the committee. In no case shall the agency or governing authority, before selecting a firm for negotiation under paragraph (f) of this subsection (10), seek formal or informal submission of verbal or written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

(f) On the basis of evaluations, discussions, and any presentations, the agency or governing authority shall select no less than three (3) firms that it determines to be qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The agency or governing authority shall then contact the firm ranked most preferred to negotiate a contract at a fair and reasonable compensation. If fewer than three (3) firms submit letters of interest and the agency or governing authority determines that one (1) or both of those firms are so qualified, the agency or governing authority may proceed to negotiate a contract under paragraph (g) of this subsection (10).

(g) The agency or governing authority shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified firm at

compensation that the agency or governing authority determines in writing to be fair and reasonable. In making this decision, the agency or governing authority shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered. In no case may the agency or governing authority establish a maximum overhead rate or other payment formula designed to eliminate firms from contention or restrict competition or negotiation of fees. If the agency or governing authority is unable to negotiate a satisfactory contract with the firm that is most preferred, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The agency or governing authority shall then begin negotiations with the firm that is next preferred. If the agency or governing authority is unable to negotiate a satisfactory contract with any of the selected firms, the agency or governing authority shall reevaluate the construction management at risk, architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The agency or governing authority shall then compile a second list of not less than three (3) qualified firms and proceed in accordance with the provisions of this section. A firm negotiating a contract with an agency or governing authority shall negotiate subcontracts for architectural, engineering, and land surveying services at compensation that the firm determines in writing to be fair and reasonable based upon a written description of the scope of the proposed services.

(11)(a) The construction manager selected by the agency or governing authority to provide construction management at risk services shall solicit bids for construction on the project pursuant to Section 31-7-13. The construction manager shall be entitled to enter into contracts for construction with the lowest and best bidders, as determined in consultation with the agency or governing authority. Before soliciting bids or entering into any such contract, the construction manager, in consultation with the agency or governing authority, may prequalify any contractors or vendors seeking to submit a bid on the project, taking into account defined qualifications which may include, but not be limited to, the following:

- (i) Past experience and performance record on projects of similar size and scope;
- (ii) Current financial status and ability to provide acceptable payment and performance bonds and meet defined insurance requirements;
- (iii) Current workload and backlog of committed work for the period scheduled for the project under consideration;
- (iv) Safety record to include prior citations and fines if applicable;
- (v) History of legal disputes or performance defaults;
- (vi) Identification and experience of project personnel and required manpower;
- (vii) Plan for and ability to meet the applicable project schedule; and

(viii) Any other qualification-based factors as the agency, governing authority or construction manager may determine are applicable.

(b) The construction manager, in consultation with the agency or governing authority, shall publish the defined qualifications that shall be considered in the prequalification process at least two (2) weeks in advance of any prequalification of contractors or vendors seeking to submit a bid on the project. Publication shall be in a regular newspaper published in the county or municipality in which the agency or governing authority is located. The agency or governing authority shall also post the defined prequalification requirements on its website.

(c) The failure of a bidder to provide information in a timely and complete manner in response to any prequalification process may result in the disqualification of such bidder in the discretion of the agency, governing authority, and construction manager.

(d) Except as otherwise provided in Section 25-61-9, confidential and proprietary information furnished by a bidder pursuant to this section shall not be disclosed outside of the agency, governing authority, or construction manager without the prior written consent of the bidder. The bidder shall identify and label any information considered to be confidential and proprietary at the time of submission of the same to the agency, governing authority, or construction manager.

(12) The provisions of this section shall not affect any procurement by the Mississippi Transportation Commission.

HISTORY: Laws, 2007, ch. 494, § 2, eff from and after July 1, 2007; Laws, 2021, ch. 418, § 1, eff from and after passage (approved April 5, 2021).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in subsection (10)(e) by substituting “paragraph (f) of this subsection (10)” for “paragraph (f) of this section” and an error in an internal reference in subsection (10)(f) by substituting “paragraph (g) of this subsection (10)” for “paragraph (g) of this section.” The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2021 amendment, effective April 5, 2021, in (10), inserted “construction management at risk” in the first sentences of (a), (b), (c), (e) and in the eighth sentence of (g); added (11); and redesignated former (11) as (12).

§ 31-7-14. Public contracts of energy efficiency services [Repealed effective July 1, 2025].

(1)(a) For purposes of this section, the following words and phrases shall have the meaning ascribed herein, unless the context clearly indicates otherwise:

(i) “Division” means the Energy Division of the Mississippi Development Authority.

(ii) “Energy services” or “energy efficient services” means energy efficiency equipment, services relating to the installation, operation and maintenance of equipment and improvements reasonably required to

existing or new equipment and existing or new improvements and facilities including, but not limited to, heating, ventilation and air-conditioning systems, lighting, windows, insulation and energy management controls, life safety measures that provide long-term, operating-cost reductions, building operation programs that reduce operating costs, alternative fuel motor vehicles including vehicles that have been converted to such and ancillary equipment related to or associated with the fueling of alternative fuel motor vehicles, or other energy-conservation-related improvements, including improvements or equipment related to renewable energy, water and other natural resources conservation, including accuracy and measurement of water distribution and/or consumption, and other equipment, services and improvements providing verifiable cost savings.

(iii) “Energy services provider” means a person or business with a successful record of documented energy savings projects that is experienced in the design, implementation and installation of energy conservation measures; has the technical capabilities to verify that such measures generate energy and operational cost savings or enhanced revenues; has the ability to guarantee the savings; has the ability to secure or arrange the financing necessary to support the implementation of the energy conservation measures; and is approved by the division.

Approval by the division of an energy services provider shall be granted in a prequalification process.

Such energy services providers may petition the division to review their qualifications and deem them to be qualified for inclusion on a prequalification list if they meet the qualifications set forth by the division.

Any energy services project that has been competitively bid and awarded prior to any change in law shall be allowed to continue under the laws current at the time the project was awarded.

The division shall ensure that small businesses are not disadvantaged in the determination of a qualified energy services provider.

(iv) “Entity” means the board of trustees of any public school district, junior college, institution of higher learning, publicly owned hospital, state agency or governmental authority under this chapter.

(v) “Energy services contract” means an agreement to provide energy services which include, but are not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency. Payments for the contract are not contingent upon the actual savings realized from the equipment.

(vi) “Energy performance contract” means an agreement to provide energy services which includes, but is not limited to, the design, installation, financing and maintenance or management of the energy systems or equipment in order to improve its energy efficiency.

(vii) “Shared-savings contract” means an agreement where the con-

tractor and the entity each receive a preagreed percentage or dollar value of the energy cost savings over the life of the contract.

(viii) "Reduce operating costs" means elimination of future expenses or avoidance of future replacement expenditures as a result of new equipment installed or services performed. Material savings, labor savings, cancelled maintenance contracts, et cetera, shall be considered as being viable to reduce operating costs. Reduce operating costs may be included in the performance contract or energy services agreement solely at the discretion of the entity. A contract that otherwise satisfies the requirements of this section shall satisfy the requirements allowing use of an energy performance, energy services or shared-savings contract even if the sole expense being eliminated is maintenance expense.

(ix) "Capital cost avoidance" means planned capital improvement expenditures that will be avoided through implementation of the energy services project. Capital cost avoidance may be included in an energy services contract or an energy performance contract solely at the discretion of the entity. Capital cost avoidance may be claimed as an annual avoidance or as a one-time avoidance in a specific year of the contract term, depending upon the nature of the avoided capital cost.

(x) "Alternative fuel motor vehicle" means a motor vehicle propelled by alternative fuel either as a dedicated alternative fuel vehicle, as a bi-fuel vehicle using alternative fuel as one of its fuels, or as a dual fuel vehicle using alternative fuel as one of its fuels.

(xi) "Energy conservation measure" means the individual items or components of a large energy services or energy efficient services program.

(xii) "Simple payback period" means the amount of time for the recuperation of the initial investment. The simple payback period is calculated by dividing the initial investment by the annual savings. The simple payback period for any contract shall not exceed twenty (20) years. The simple payback period of an individual energy conservation measure shall not be considered in any evaluation provided the simple payback period for the contract does not exceed twenty (20) years.

(b) An entity may enter into an energy services contract, energy performance contract, shared-savings contract, any of which may contain a lease, or lease-purchase contract for energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities and shall contract in accordance with the following provisions:

(i) The division may assemble a list of prequalified energy services providers. The division shall use objective criteria in the selection process. The criteria for evaluation shall include, but shall not be limited to, the following factors: to assess the capability of the qualified energy services provider in the area of design engineering, installation, maintenance and repairs associated with energy services or guaranteed energy performance contracts; qualifications including engineering depth and experience,

post-installation project monitoring, data collection, and verification of and reporting of savings; overall project experience and qualifications; management capability; ability to access long-term sources of project financing; financial health and stability, litigation history with customers and other factors determined by the division to be relevant and appropriate and related to the ability to perform the project. The division shall either accept or reject an application for prequalification from an energy services provider within sixty (60) days after receipt. If the division fails to act within sixty (60) days from the date of receiving an application, then the application shall automatically be accepted and the energy services provider shall be added to the prequalified list.

(ii) An entity shall publicly issue requests for proposals, advertised in the same manner as provided in Section 31-7-13 for seeking competitive sealed bids, concerning the provision of energy efficiency services relating to the installation, operation and maintenance of equipment, improvements reasonably required to existing or new equipment and existing or new improvements and facilities or the design, installation, ownership, operation and maintenance of energy efficiency equipment. Those requests for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and any other matters as the entity determines to be appropriate for inclusion.

(iii) Upon receiving responses to the request for proposals, the entity may select the most qualified proposal or proposals on the basis of experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the entity and any other relevant factors determined to be appropriate.

(iv) An entity shall negotiate and enter into contracts with the person, persons, firm or firms submitting the proposal selected as the most qualified under this section.

(v) The annual rate of interest paid under any lease-purchase agreement authorized by this section shall not exceed the maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101.

(vi) The maximum lease-purchase term for any equipment acquired under this section shall not exceed the lesser of twenty (20) years or the average useful life of the energy conservation measures from the date the energy conservation measures have been completed and accepted by the governmental unit.

(vii) This subsection shall, with respect to the procurement of energy efficiency services and/or equipment, supersede any contradictory or conflicting provisions of Chapter 7, Title 31, Mississippi Code of 1972, and other laws with respect to awarding public contracts.

(2)(a) The division may contract with a party selected under this subsection to provide financing to entities and private "nonprofit" hospitals, to purchase energy efficiency equipment, services relating to the installation,

operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities or an energy saving performance contract, energy services contract, or lease-purchase basis. Any energy efficiency lease financing contract entered into by the division before May 15, 1992, shall be valid and binding when the contract was entered into under this subsection.

(b) The entities and private "nonprofit" hospitals that decide to contract for energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a lease, energy services contract or lease-purchase basis, may request financial assistance from the division.

(c) The provisions of any energy efficiency lease-purchase agreements authorized under this subsection (2) shall comply with the requirements of subsection (1)(b)(v) of this section. The term of any lease or lease-purchase agreement for energy efficiency services and/or equipment entered into under this section shall not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract.

(d) Any entity or private "nonprofit" hospital having approval of the division may borrow money in anticipation of entering into a lease-purchase agreement pursuant to subsection (2)(b) of this section. Any borrowing may be upon terms and conditions as may be agreed upon by the borrowing entity and the party advancing interim funds; however, the principal on any borrowing shall be repaid within a period of time not to exceed one hundred eighty (180) days. In borrowing money under this paragraph (d), it is not necessary to publish notice of intention to do so or to secure the consent of the qualified electors, either by election or otherwise. Any borrowing may be negotiated between the parties and is not required to be publicly bid, may be evidenced by negotiable notes or lease and shall not be considered when computing any limitation of indebtedness of the borrowing entity established by law. The principal, interest and costs of incurring any borrowing shall not exceed the principal amount of the final contract or agreement approved by the division, and accepted by the borrowing entity, under subsection (2)(b) of this section.

(e) This subsection (2) shall, with respect to the procurement of energy efficiency services and/or equipment, supersede the provisions of any contradictory or conflicting provisions of Chapter 7, Title 31, Mississippi Code of 1972, and other laws with respect to awarding public contracts.

(3) All lease-purchase agreements authorized by this section and the income from those agreements shall be exempt from all taxation within the State of Mississippi, except gift, transfer and inheritance taxes.

(4)(a) An entity may contract for energy efficiency equipment services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared-savings basis or performance basis.

(b) If an entity decides to enter into a contract for energy efficiency equipment, services relating to the installation, operation or maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities on a shared-savings basis or performance basis, the entity shall issue a request for proposals or a request for qualifications, as determined necessary by the division, in the same manner as prescribed under subsection (1)(b) of this section. The entity shall notify the division in writing of its intention to issue a request for proposals or a request for qualifications.

(c) The terms of any shared-savings contract, energy services contract, or energy performance contract entered into under this section may not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract.

(d) The terms of any shared-savings or energy performance contract entered into under this section must contain a guarantee of savings clause from the company providing energy efficiency equipment services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities.

(5)(a) By March 1 and September 1 of each year, each entity that enters into an energy performance contract or shared-savings contract shall report to the division its energy usage by meter in dollars and consumption by fuel type for the previous six-month period determined by the division.

(b) The division shall remove qualified status of an energy services provider that fails to meet the reporting requirements of paragraph (a) of this subsection after two (2) such violations.

(c) Any costs associated with the reporting made under this subsection (5) shall be paid by the energy services provider.

(6) The contract may be construed to provide flexibility to public agencies in structuring agreements entered into hereunder so that economic benefits may be maximized.

(7) This section shall stand repealed on July 1, 2025.

HISTORY: Laws, 1985, ch. 493, § 1; Laws, 1992, ch. 571 § 1; Laws, 1997, ch. 405, § 1; Laws, 1998, ch. 593, § 1; Laws, 2000, ch. 503, § 1; Laws, 2006, ch. 503, § 1; Laws, 2014, ch. 481, § 1; Laws, 2017, ch. 424, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 379, § 1, eff from and after July 1, 2019; reenacted and amended, Laws, 2021, ch. 438, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the first and last sentences of subsection (2)(d) by substituting “paragraph (b) of this subsection (2)” for “subsection (2)(b) of this section” The Joint Committee ratified the correction at its October 19, 2020, meeting.

Amendment Notes — The 2021 amendment reenacted and amended the section to extend the date of the repealer for the section by substituting “July 1, 2025” for “July 1, 2021” in (7).

IMPLEMENTATION OF CENTRAL PURCHASING BY COUNTIES

Sec.
31-7-124. Bond of purchase clerk, receiving clerk and inventory control clerk.

§ 31-7-124. Bond of purchase clerk, receiving clerk and inventory control clerk.

The receiving clerk and inventory control clerk shall give bond in a penalty equal to Seventy-five Thousand Dollars (\$75,000.00) and the purchase clerk shall give bond in a penalty equal to One Hundred Thousand Dollars (\$100,000.00) with sufficient surety, to be payable, conditioned and approved as provided by law. All assistant purchasing, receiving and inventory control clerks shall be bonded in a penalty not less than Fifty Thousand Dollars (\$50,000.00). Such bond shall be in addition to any other bond required by law, with sufficient surety, to be payable, conditioned and approved as provided by law. The premiums of such bonds shall be paid from any funds available to the board of supervisors for the payment of such premiums.

HISTORY: Laws, 1988 Ex Sess, ch. 14, § 29; Laws, 2009, ch. 467, § 13, eff from and after July 1, 2009; Laws, 2021, ch. 337, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first sentence, deleted “purchase clerk” following “The” and inserted “and the purchase clerk shall give bond in a penalty equal to One Hundred Thousand Dollars (\$100,000.00).”

TIMELY PAYMENT FOR PURCHASES BY PUBLIC BODIES

§ 31-7-301. Legislative findings; meaning of term “public bodies”

Joint Legislative Committee.-- Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second sentence of (3) by substituting “this subsection (3)” for “this paragraph.” The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 31-7-305. Recordkeeping and notice requirements; time for mailing check in payment of invoice; time for payment in event of dispute; interest penalties.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the second sentence of (3) by substituting “this subsection (3)” for “this paragraph.” The Joint Committee ratified the correction at its October 19, 2020, meeting.

CHAPTER 9.

SURPLUS PROPERTY PROCUREMENT COMMISSION

Sec.
31-9-13. Revolving fund.

§ 31-9-13. Revolving fund.

In lieu of regular appropriations, the Department of Finance and Administration may assess against each institution, agency or individual acquiring surplus property from and through the Department of Finance and Administration a fee or commission on each item in sufficient amount to establish and maintain a revolving fund, to be used to operate and support the Department of Finance and Administration, Office of Surplus Property's Federal Donation program. The Department of Finance and Administration shall follow the procedure outlined by the United States General Services Administration in establishing the fund, and the fund shall never exceed more than One Million Dollars (\$1,000,000.00) above and beyond four (4) months of operating expenses of the Department of Finance and Administration.

With this revolving fund so acquired, the Department of Finance and Administration shall meet all items of expense incurred in acquiring, transporting, warehousing and distributing property to eligible applicants and also all items of expense incident to the operation of the offices of the Department of Finance and Administration, including salaries, office supplies and necessary general expenses, and all other items as are covered by legislative appropriation for those purposes.

The Department of Finance and Administration may escalate, budget and expend funds from the revolving fund in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any one fiscal year to carry out the provisions of this section.

HISTORY: Codes, 1942, § 9028-08; Laws, 1952, ch. 337, §§ 1-5; Laws, 1956, ch. 366, §§ 1-5; Laws, 1958, ch. 470, § 1; Laws, 1960, ch. 377, § 2; Laws, 1960, ch. 398, § 2; Laws, 1962, ch. 484, § 10; Laws, 1971, ch. 450, § 1; Laws, 1984, ch. 488, § 27; Laws, 2005, ch. 475, § 1; Laws, 2006, ch. 576, § 1; Laws, 2007, ch. 306, § 1, eff from and after July 1, 2007; Laws, 2021, ch. 328, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment, in the first paragraph, inserted “Office of Surplus Property's Federal Donation program” at the end of the first sentence, and substituted “General Services Administration” for “Department of Health and Human Services” in the second sentence.

CHAPTER 11.

STATE CONSTRUCTION PROJECTS

In General. 31-11-1

IN GENERAL

Sec.

31-11-3. Powers and duties.

§ 31-11-3. Powers and duties.

(1) The Department of Finance and Administration, for the purposes of carrying out the provisions of this chapter, in addition to all other rights and powers granted by law, shall have full power and authority to employ and compensate architects or other employees necessary for the purpose of making inspections, preparing plans and specifications, supervising the erection of any buildings, and making any repairs or additions as may be determined by the Department of Finance and Administration to be necessary, pursuant to the rules and regulations of the State Personnel Board. The department shall have entire control and supervision of, and determine what, if any, buildings, additions, repairs, demolitions or improvements are to be made under the provisions of this chapter, subject to the regulations adopted by the Public Procurement Review Board.

(2) The department shall have full power to erect buildings, make repairs, additions or improvements, demolitions, to grant or acquire easements or rights-of-way, and to buy materials, supplies and equipment for any of the institutions or departments of the state subject to the regulations adopted by the Public Procurement Review Board. In addition to other powers conferred, the department shall have full power and authority, as directed by the Legislature, or when funds have been appropriated for its use for these purposes, to:

(a) Build a state office building;

(b) Build suitable plants or buildings for the use and housing of any state schools or institutions, including the building of plants or buildings for new state schools or institutions, as provided for by the Legislature;

(c) Provide state aid for the construction of school buildings;

(d) Promote and develop the training of returned veterans of the United States in all sorts of educational and vocational learning to be supplied by the proper educational institution of the State of Mississippi, and in so doing allocate monies appropriated to it for these purposes to the Governor for use by him in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;

(e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;

(f) Build and equip additional buildings and wards at the Boswell Retardation Center;

(g) Construct a sewage disposal and treatment plant at the Mississippi State Hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;

(h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;

(i) Build and equip suitable facilities for a training and employing center for the blind;

(j) Build and equip a gymnasium at Columbia Training School;

(k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;

(l) Expend monies appropriated to it in paying the state's part of the cost of any street paving;

(m) Sell and convey state lands when authorized by the Legislature, cause said lands to be properly surveyed and platted, execute all deeds or other legal instruments, and do any and all other things required to effectively carry out the purpose and intent of the Legislature. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(n) Collect and receive from educational institutions of the State of Mississippi monies required to be paid by these institutions to the state in carrying out any veterans' educational programs;

(o) Purchase lands for building sites, or as additions to building sites, for the erection of buildings and other facilities which the department is authorized to erect, and demolish and dispose of old buildings, when necessary for the proper construction of new buildings. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(p) Obtain business property insurance with a deductible of not less than One Hundred Thousand Dollars (\$100,000.00) on state-owned buildings under the management and control of the department; and

(q) In consultation with and approval by the Chairmen of the Public Property Committees of the Senate and the House of Representatives, enter into contracts for the purpose of providing parking spaces for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building.

(r) The department is hereby authorized to transfer up to One Million Dollars (\$1,000,000.00) of available bond funds to each community college requesting to be exempt from department control and supervision relating to the repair, renovation and improvement of existing facilities owned by the community colleges, including utility infrastructure projects; heating and air conditioning systems; and the replacement of furniture and equipment. The community colleges shall abide by all applicable statutes related to the purchase of the repair, renovation and improvement of such existing facilities.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of architectural alterations, pursuant to the Americans With Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to

the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.

(4) The department shall observe the provisions of Section 31-5-23 in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.

(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority, regardless of the source of funding used to defray the costs of the construction or renovation project, for which services are to be obtained to ensure compliance with purchasing regulations and to confirm that the contracts are procured by a competitive qualification-based selection process except where such appointment is for an emergency project or for a continuation of a previous appointment for a directly related project. The provisions of this subsection (7) shall not apply to:

(a) Any architectural or engineering contract fully paid for by self-generated funds of any of the state institutions of higher learning;

(b) Any architectural or engineering contract that is self-administered at a state institution of higher learning as provided under Section 27-104-7(2)(b) or 37-101-15(m);

(c) Community college projects that are fully funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature;

(d) Any construction or design projects of the State Military Department that are fully or partially funded from federal funds or other nonstate sources; and

(e) Any project of the State Department of Transportation.

(8)(a) The department shall have the authority to obtain annually from the state institutions of higher learning, the state community colleges and junior colleges, the Department of Mental Health, the Department of Corrections and the Department of Wildlife, Fisheries and Parks information on all renovation and repair expenditures for buildings under their operation and control, including duties, responsibilities and costs of any architect or engineer hired by any such institutions, and shall annually report the same to the Legislative Budget Office, the Chairman of the House Public Property Committee and the Chairman of the Senate Public Property Committee before September 1.

(b) All state agencies, departments and institutions are required to cooperate with the Department of Finance and Administration in carrying out the provisions of this subsection.

(c) Expenditures shall not include those amounts expended for janitorial, landscaping or administrative support, but shall include expenditures from both state and nonstate sources.

(d) Expenditures shall not include amounts expended by the department on behalf of state agencies, departments and institutions through the Department of Finance and Administration administered contracts, but shall include amounts transferred to the Department of Finance and Administration for support of such contracts.

(9) As an alternative to other methods of awarding contracts as prescribed by law, the department may elect to use the method of contracting for construction projects set out in Sections 31-7-13.1 and 31-7-13.2; however, the design-build method of construction contracting authorized under Section 31-7-13.1 may be used only when the Legislature has specifically required or authorized the use of this method in the legislation authorizing a project.

(10) The department shall have the authority, for the purposes of carrying out the provisions of this chapter, and in addition to all other rights and powers granted by law, to create and maintain a list of suspended and debarred contractors and subcontractors. Consistent with this authority, the department may adopt regulations governing the suspension or debarment of contractors and subcontractors, which regulations shall be subject to the approval of the Public Procurement Review Board. A suspended or debarred contractor or subcontractor shall be disqualified from consideration for contracts with the department during the suspension or debarment period in accordance with the department's regulations.

(11) This section shall not apply to the Mississippi State Port Authority.

HISTORY: Codes, 1942, § 9023-02; Laws, 1944, ch. 328, §§ 2-4; Laws, 1946, ch. 386, §§ 1, 2; Laws, 1950, ch. 392, § 2; Laws, 1981, ch. 323, § 1; Laws, 1984, ch. 488, § 30; Laws, 1991, ch. 411, § 1; Laws, 1993, ch. 615, § 2; Laws, 1994, ch. 448, § 1; Laws, 1994 Ex Sess, ch. 26, § 24; Laws, 2004, 3rd Ex Sess, ch. 1, § 189; Laws,

2005, ch. 504, § 1; Laws, 2006, ch. 457, § 3; Laws, 2006, ch. 579, § 2; Laws, 2007, ch. 494, § 8; Laws, 2008, ch. 488, § 1; Laws, 2010, ch. 314, § 3; Laws, 2011, ch. 485, § 1; Laws, 2012, ch. 485, § 3; Laws, 2014, ch. 533, § 3; Laws, 2016, ch. 399, § 2; Laws, 2017, ch. 351, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 465, § 2, eff from and after July 1, 2019; Laws, 2021, ch. 424, § 1, eff from and after July 1, 2021; Laws, 2021, ch. 451, § 2, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 1 of Chapter 424, Laws of 2021, effective from and after July 1, 2021 (approved April 9, 2021), amended this section. Section 2 of Chapter 451, Laws of 2021, effective from and after July 1, 2021 (approved April 16, 2021), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 451, Laws of 2021, which contains language that specifically provides that it supersedes § 31-11-3 as amended by Chapter 424, Laws of 2021.

Amendment Notes — The first 2021 amendment (ch. 424) added (2)(r).
The second 2021 amendment (ch. 451) added (2)(r); and in (9), deleted “dual-phase” preceding “design-build.”

CHAPTER 19.

PUBLIC DEBTS

- | | |
|-----------|---|
| Sec. | |
| 31-19-27. | Doubtful claims defined. |
| 31-19-29. | Compromise of doubtful claims. |
| 31-19-30. | Receipt and consideration of offers to compromise and settle doubtful claims. |

§ 31-19-27. Doubtful claims defined.

(1) A doubtful claim of the state, or of the county, city, town, village, or levee board is one for which judgment has been rendered and for the collection of which the ordinary process of law has been ineffectual; debts due by drainage districts or other taxing districts or sinking funds to counties under the Rehabilitation Act of 1928, being Chapter 88, Laws of 1928, and Chapter 16 of the Acts of the Special Session of 1931; those debts due counties by drainage districts, which the Reconstruction Finance Corporation has heretofore refused to refinance; those debts due a municipal utility system as authorized under Section 21-27-77; debts due for sixteenth section township school fund loans made to churches, where the board of supervisors finds that the value of the security given therefor is insufficient or inadequate to pay or satisfy the principal and interest of said loan, and when the church repays the principal of said loan; and debts due by counties and townships to drainage districts for drainage district assessments or taxes levied and assessed upon sixteenth section lands.

(2) For the purposes of Section 31-19-30, a doubtful claim is one for which a notice of tax lien has been enrolled in the Uniform State Tax Lien registry for a finally determined tax liability and for the collection of which the ordinary process of law has been ineffectual.

HISTORY: Codes, 1892, § 1572; 1906, § 1680; Hemingway's 1917, § 1427; 1930, § 5995; 1942, § 4385; Laws, 1934, ch. 204; Laws, 1938, ch. 344; Laws, 1946, ch. 241, § 1; Laws, 1950, ch. 254, § 1; Laws, 2021, ch. 461, § 2, eff from and after July 1, 2021; Laws, 2021, ch. 469, § 2, eff from and after passage (approved April 18, 2021).

Joint Legislative Committee Note — Section 1 of Chapter 461, Laws of 2021, effective from and after July 1, 2021 (approved April 16, 2021), amended this section. Section 2 of Chapter 469, Laws of 2021, effective from and after passage (approved April 18, 2021), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 20, 2021, meeting of the Committee.

Amendment Notes — The first 2021 amendment (ch. 461) added (2); and made a minor stylistic change.

The second 2021 amendment (ch. 469), effective April 18, 2021, inserted “those debts due a municipal utility system as authorized under Section 21-27-77.”

§ 31-19-29. Compromise of doubtful claims.

The Governor, on the advice of the Attorney General or Commissioner of Revenue of the Department of Revenue, may, upon application of the defendant or debtor proposing a compromise, settle and compromise any doubtful claim, as described in Section 31-19-27(1), of the state, or of any county, city, town, or village, or of any levee board against such defendant or debtor, upon such terms as he may deem proper, the board of supervisors in the case of a county, and the municipal authorities in the case of a city, town or village, and the levee board in the case of a claim of a levee board, concurring therein. The Governor, upon application of a drainage district having obligations outstanding to a county under the provisions of Chapter 88, Laws of 1928, and Chapter 16, Laws of the Extraordinary Session of 1931, or obligations which the Reconstruction Finance Corporation has heretofore refused to refinance, may settle and compromise any claim, debt or obligation that said drainage district may owe any county in the State of Mississippi for money loaned said district under the provisions of said Chapter 88, Laws of 1928, or any other claim, debt or obligation that said drainage district may owe the county which the Reconstruction Finance Corporation has heretofore refused to finance, if the board of supervisors of said county concurs in the application of the drainage district. The Governor, upon application by the board of supervisors for any taxing districts of said county or sinking funds of said county under the control and supervision of said board of supervisors having obligations outstanding and due to said county under the provisions of Chapter 88, Laws of 1928, and Chapter 16, Laws of the Extraordinary Session of 1931, may settle and compromise any claim, debt, or obligation that said taxing districts or sinking funds may owe said county for money loaned said taxing districts or sinking

funds under the provisions of said Chapter 88, Laws of 1928; and provided that the Governor, on the advice of the Attorney General, and upon application of a church owing a sixteenth section township school fund loan, may settle and compromise such debt or obligation if the board of supervisors of the said county concurs in the application of the said church. The Governor may, on the advice of the Attorney General, in like manner compromise and settle a claim of a drainage district for unpaid assessments or taxes upon sixteenth section lands upon application of the board of supervisors wherein such sixteenth section is situated, if the commissioners of the drainage district concur therein.

HISTORY: Codes, 1892, § 1573; 1906, § 1681; Hemingway's 1917, § 1428; 1930, § 5996; 1942, § 4386; Laws, 1934, ch. 205; Laws, 1938, ch. 339; Laws, 1946, ch. 241, § 2; Laws, 1950, ch. 254; § 2; Laws, 1962, ch. 588, § 19, eff from and after Jan. 1, 1964; Laws, 2021, ch. 461, § 3, eff from and after July 1, 2021; Laws, 2021, ch. 469, § 3, eff from and after passage (approved April 18, 2021).

Joint Legislative Committee Note — Section 2 of Chapter 461, Laws of 2021, effective from and after July 1, 2021 (approved April 16, 2021), amended this section. Section 3 of Chapter 469, Laws of 2021, effective from and after passage (approved April 18, 2021), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 461, Laws of 2021, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The first 2021 amendment (ch. 461), in (1), in the first sentence, substituted “Commissioner of Revenue of the Department of Revenue” for “Chairman of the State Tax Commission,” and inserted “as described in Section 31-19-27(1).”

The second 2021 amendment (ch. 469), effective April 18, 2021, in the first sentence, substituted “the Commissioner of Revenue at the State Department of Revenue” for “Chairman of the State Tax Commission”; and added the third sentence.

§ 31-19-30. Receipt and consideration of offers to compromise and settle doubtful claims.

(1) The Commissioner of Revenue shall develop procedures for the receipt and consideration of offers to compromise and settle doubtful claims as defined in Section 31-19-27. If the commissioner makes a determination that a finally determined tax liability is a doubtful claim as defined in Section 31-19-27 and should be settled and compromised, that recommendation shall be made to the Governor as provided in Section 31-19-29.

(2) Upon the advice of the Attorney General, the Commissioner of Revenue is authorized to enter into an agreement with a taxpayer under which a finally determined tax liability that is a doubtful claim is settled and compromised. The settlement agreement shall be binding and a taxpayer's liabilities for taxes, interest and penalties will be fully and finally compromised. If the Commissioner of Revenue later determines that the taxpayer misrepresented, whether intentionally or not, the financial condition of the taxpayer or any property belonging to the taxpayer or other person liable for the tax, all

compromised liabilities may be reestablished without regard to any statute of limitations that otherwise may be applicable.

(3) The Commissioner of Revenue and the Department of Revenue may discuss with and provide the Attorney General or his designated representative with information related to an offer to compromise and settle any doubtful claim under this section. Such discussions shall be subject to the confidentiality requirements of Sections 27-3-73, 27-7-83, 27-13-57 and/or 27-65-81, as the case may be.

(4) The Commissioner of Revenue shall have all powers necessary to implement and administer this section, and shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

HISTORY: Laws, 2021, ch. 461, § 1, eff from and after July 1, 2021.

